

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA, <u>ex rel.</u>)	
Cori Rigsby, et al.,)	
)	
Plaintiff,)	Civil No. 1:06cv00433-LTS-RHW
)	
v.)	
)	
STATE FARM INS. CO., et al.)	
)	
Defendants.)	
_____)	

**UNITED STATES' NOTICE OF REJECTION OF PROPOSED SETTLEMENT AS TO
DEFENDANT FORENSIC ANALYSIS AND ENGINEERING CORP.
AND MOTION TO DISMISS WITHOUT PREJUDICE**

The False Claims Act (FCA) provides (in pertinent part) that a *qui tam* suit “may be dismissed only if ... the Attorney General give[s] written consent to the dismissal.” 31 U.S.C. § 3730(b)(1). The United States respectfully notifies this Court that the Attorney General does not consent to the the proposed settlement agreement reached between Relators and defendant Forensic Analysis and Engineering Corp. (FAEC). That settlement must therefore be rejected.

Under the proposed settlement, FAEC would agree to pay \$25,000, spread over a period of several years, in exchange for Relators and the Government consenting to dismissal of FAEC with prejudice. This is unacceptable to the Government because we understand that FAEC is currently insolvent. It is not in a position to pay any money at all toward a settlement. The Government would be exchanging something of value – a release with prejudice – for something of no value – the right to become an unsecured creditor with an unpayable claim. Potentially, if FAEC were to enter bankruptcy, the Government would have to expend time and effort participating in a bankruptcy proceeding, which would mean that the proposed settlement

actually is of negative value for the Government.

The United States has offered a proposed alternative resolution to FAEC and the Relators. Its proposal is that FAEC pay no money in settlement and instead be dismissed from this case without prejudice to the United States. This resolution would amount to a walkaway, with no party giving up anything of value.¹

For the foregoing reasons, the United States hereby moves that FAEC be dismissed from this action without prejudice to the United States. FAEC has informed the Government that it consents to the Government's alternative proposal and dismissal without prejudice.² Relators' counsel has not authorized the Government to make a representation of their position.

Respectfully submitted,

TONY WEST
Assistant Attorney General

DON BURKHALTER
United States Attorney
Southern District of Mississippi

Dated: October 22, 2010

/s Felicia C. Adams
FELICIA C. ADAMS, MS Bar No. 1049
ALFRED B. JERNIGAN, JR.
Assistant United States Attorneys
188 East Capitol Street, Suite 500
Jackson, MS 39201
Telephone: (601) 965-4480
Fax: (601) 965-4409

¹ It is true that Relators would be forgoing whatever relator's share they might be entitled to from the proposed \$25,000 settlement. However, since the likelihood of that settlement actually being paid is so low and might even require time and expense to enforce, the actual value of that proposed settlement to Relators would be minuscule.

² Counsel for the United States spoke with Mr. Robert Gholson, former counsel to FAEC. Mr. Gholson explained that he no longer represents FAEC, but he conveyed FAEC's approval of the Government's proposal as a courtesy.

JOYCE R. BRANDA
PATRICIA R. DAVIS
JAY D. MAJORS
Attorneys, Department of Justice
Civil Division
Post Office Box 261
Ben Franklin Station
Washington, DC 20044
Tel: (202) 307-0264
Fax: (202) 514-0280

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing UNITED STATES' NOTICE OF REJECTION OF PROPOSED SETTLEMENT AND PROPOSED ALTERNATIVE RESOLUTION has been sent via CM-ECF electronic service, to all parties, on October 22, 2010.

Dated: October 22, 2010

/s Felicia C. Adams
FELICIA C. ADAMS, MS Bar No. 1049
ALFRED B. JERNIGAN, JR.
Assistant United States Attorneys
188 East Capitol Street, Suite 500
Jackson, MS 39201
Telephone: (601) 965-4480
Fax: (601) 965-4409